IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO.513 OF 1997

1. Mohanbhai Ishwarbhai Patel
of Mumbai, Indian inhabitant,
residing at "Sanjiv", 12th Road,
New India Society, Juhu,
Mumbai 400 049.

2. Nayankumar M.Patel
of Mumbai, Indian inhabitant
residing at "Sanjiv", 12th Road,
New India Society, Juhu,
Mumbai 400 049. ..Applicants
(Org.Plffs.1 & 3)

Versus

1. Indian Council of Basic Education,
a Society registered under the
Societies Registration Act, 1960,
having its office at Gandhi
Shikshan Bhavan, Juhu,
Mumbai 400 049.

2. Vajubhai J. Patel,
of Mumbai, Indian inhabitant,
residing at Sonawala Building,
Bharucha Marg, Tardeo,
Mumbai 400 007.

3. Leelaben Vajubhai Patel
of Mumbai, Indian inhabitant,
residing at Sonawala Building,
Bharucha March, Tardeo,
Mumbai 400 007.

4. Sonal H. Shukla,
of Mumbai, Indian inhabitant,
residing at Bhavna Apartment,
S.V.Road, Vile Parle (West),
Mumbai 400 056.

5. Charity Commissioner,
Maharashtra State, Mumbai,
having office at 83,
Dr.A.B.Road, Mumbai 400 018 ..Respondents
(Org.Def.Nos.1 to 5)

6. Chhotabhai B. Patel
of Mumbai, Indian inhabitant,
residing at Jyoti, Vallabh
Nagar Society, Juhu,
Mumbai 400 049.

7. Kanchanlal M. Patel,
of Mumbai, Indian inhabitant,
residing at Daulat Nagar,
Borivli (East), Mumbai 400 049.

8. Chandulal Patel
of Mmbai, Indian inhabitant,
residing at Laxmi Nagar Society,
Khar (West), Mumbai 400 052.

9. Ratibai Patel
of Mumbai, Indian inhabitant,
residing at "Anand", Plot No.45,
7th Road, Hatkesh Co-operative
Housing Society, JVPD Scheme,
Juhu, Mumbai 400 049.

10. Pratap Gandhi
of Mumbai, Indian inhabitant,
residing at Saraswat Bank Bldg.,
New India Society, JVPD Scheme,
Mumbai 400 049. ..Respondents
(Org.Plffs.2 & 4 to 7)

Mr.Shekhar Shetye with Mr.Viral Amin i/b. M/s. B. Amin & Co. for applicants.

Mr.A.S.Khandeparkar for Resp.Nos.1 to 4.

Ms.Geeta Mulekar, AGP for Resp.No.5.

CORAM: B.H.MARLAPALLE,J.
July 26, 2005.

ORAL JUDGMENT:

1. S.C.Suit No.8928 of 1991 was filed by the present applicants for a declaration and permanent

injunction against defendant nos.2 to 4. The Indian Council of Basic Education which was impleaded as defendant no.1 in the said suit is a Trust registered under the Bombay Public Trusts Act, 1950 and defendant nos.2 to 4 were the members of the said Trust. The Charity Commissioner, Maharashtra State was impleaded as defendant no.5. The plaintiffs also claimed to be the members of defendant no.1 and there was a dispute between them and defendant nos.2 to 4. Defendant no.3 is the daughter of defendant no.2. Admittedly, defendant no.3 is no more. In Notice of Motion no.3430 of 1993 taken out in the said suit the following prayers were made:

> (a) that pending the hearing and final disposal of the above suit this Hon'ble Court may be pleased to pass an order:
>
> (i) restraining the Defendant Nos.2, 3 and 4 from acting as members of the First Defendant.
>
> (ii) restraining the Defendant Nos.2, 3 and 4 from acting as office bearers and/or members of the Board of Governors of First Defendant.
>
> (iii) restraining the Defendant Nos.2, 3 and 4 in any manner participating in the management and administration of the First Defendant trust;
>
> (iv) restraining the First defendant from in any manner trying to alter the composition of the present Board of

Trustees of First Defendant.

. The said notice of motion was decided by the trial Court on 14-9-1993 when nobody had appeared for defendant no.1 and defendant nos.2 to 4 were represented by a learned advocate. The following order was passed while disposing off the said Notice of Motion:

> "Notice of Motion not pressed with respect to prayer (a)(i). As regards prayers (a)(ii) and (a)(iii) are concerned, in view of the undertaking of defendant Nos.2, 3 and 4 to the Court through their counsel Mr.A.S. Khandeparkar in terms of prayers (a)(ii) and (a)(iii) of Notice of Motion till further orders, no order is necessary in terms of the said prayers (a)(ii) and (a)(iii) of the Notice of Motion. Notice of Motion is hereby made absolute in terms of prayers (a)(iv) of the same.

2. It is alleged in this revision application that inspite of the undertaking which was furnished on behalf of the defendant nos.2 to 4 and recorded by the trial Court while deciding the Notice of Motion, the said defendants wilfully disobeyed and acted in breach of the undertaking given to the trial Court inasmuch as the said defendants were participating in the management of the trust in question as well as

acting as members and office bearers of the said trust. It was specifically pointed out that the 2nd defendant had filed with the Charity Commissioner, Bombay being Change Report No.3757 of 1994 in respect of the above trust whereby the said defendant sought approval of purported resolutions to adopt new rules and regulations of the trust purported to have been passed in the meeting held on 18th August 1994. Secondly the defendant no.2 submitted certain documents and more particularly the minutes of the meeting held on 18th August 1994. The defendant no.2 along with three others came to be nominated to the Board of Trustees of defendant no.1 for a period of five years and this was approved by the general body unanimously. It was also alleged that defendant no.2 on assumption of the management of the trust had paid to his daughter the entire amount claimed in Summary Suit No.144 of 1984 and thus putting the trust into loss. The defendants filed their reply to the Notice of Motion No.445 of 1995 and prayed for dismissal of the same. It was contended, inter alia, that the undertaking furnished by the learned Advocate on behalf of the defendant nos.2 to 4 was only during the pendency of Suit No.3479 of 1984 and they were not guilty of any contempt as alleged. As per the

defendants the Division Bench of this Court decided Appeal No.883 of 1993 in Notice of Motion No.379 of 1993 pursuant to which they took over the management of defendant no.1. After hearing both the parties the said Notice of Motion came to be disposed off by the impugned order.

3. In Appeal No.883 of 1993 arising from Notice of Motion No.379 of 1993 moved in Writ Petition No.441 of 1989 the Division Bench of this Court observed as under:

> "Shri Thacker then submitted that the charge cannot be handed over only to the appellants who are members of the Board of Governors. Out of the members of the Board of Governors existing in 1982 when this Court appointed Administrators, only four members are alive and out of them, two are the appellants. The remaining two are (1) Smt. Leelaben Patel and (2) Dr. Ushaben Mehta. It is necessary for the Board of Administration to hand over the charge to the appellants and the remaining two members of the Board of Administration and the Board of Administration shall do so forthwith. While handing over the charge, the Board of Administration should take a writing from the existing members of the Board of Governors and that would give them a complete discharge."

The Division Bench also stated that there was no hesitation in observing that the Board of Governors will strictly observe the terms and conditions of the Constitution. The said appeal came to be allowed by

setting aside the order dated 10th September 1993 passed by the learned Sing Judge of this Court in Notice of Motion No.379 of 1989 and it was directed that the Board of Administration appointed by this Court shall forthwith hand over the charge of the Defendant No.1 to the appellants and other surviving members of the Board of Governors who were in the office in the year 1981.

4. In the affidavit-in-reply submitted by the defendant nos.2 to 4 before the trial Court so also in this Court it has been pointed out that there is no case of contempt so as to allow the Notice of Motion under Order XXXIX Rule 2-A of CPC and, therefore, the impugned order cannot be labelled as manifestly erroneous or illegal.

5. Order XXXIX Rule 2-A(1) of CPC reads as under:

> "(1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three

months, unless in the meantime the Court directs his release."

The High Court Amendment (Bombay) has amended clause (r) of Order XLIII Rule 1 and it reads as under:

"(r) an order under rule 1, rule 2, rule 4 rule 10 and rule 11 of Order XXXIX."

This amendment has been brought into effect from 1-10-1983 and, therefore, the order impugned was not an appealable order and hence it has been challenged in the instant revision application.

6. The main allegation which is also the foundation of Notice of Motion No. 4455 of 1995 is that the defendants nos.2 to 4 acted in breach of the undertaking given by them on 14-9-1993 when Notice of Motion No.3430 of 1993 was disposed off. The defendants in their affidavit-in-reply opposing this revision application have stated that after the undertaking was noted and Notice of Motion No.3430 of 1993 was decided on 14/9/1993, Appeal No.883 of 1993 came to be decided by a Division Bench of this Court on 26-7-1994. The present applicants were impleaded as respondent nos.3 and 5. They did not at any point

of time invite the attention of this Court to the order passed by the trial Court on 14-9-1993 in Notice of Motion No.3430 of 1993 on the basis of the undertaking furnished, and the defendants were, therefore, bound to obey the orders passed by the Division Bench of this Court. Pursuant to the order dated 26-7-1994 they were handed over the charge of the affairs of the defendant no.1 and acted as Trustees/Members of the Defendant No.1. If they have acted pursuant to the orders passed by this Court, it was submitted by Mr.Khandeparkar that there was no breach of the undertaking furnished by the defendants on 14-9-1993. It was further submitted that even otherwise the undertaking so furnished by the defendants was for a limited period i.e. during the pendency of Suit No.2002 of 1982 which was disposed off on 14-7-1994. It was further submitted by Mr.Khandeparkar that the alleged contempt has taken place on 18-8-1994 on account of the resolutions passed nominating the Board of Trustees for a period of five years and secondly by sending the change report to that effect. Thus the cause of action is after Civil Suit No.2002 of 1982 was disposed off on 14-7-1994. As per Mr.Khandeparkar the undertaking furnished by him on behalf of the defendants ceased

to operate or have a binding effect on the said defendants after 14-7-1994.

7. Mr.Shetye by relying upon the decision in the case of Prithawi Nath Ram v. State of Jharkhand **[AIR 2004 SC 4277**] submitted that disposal of the suit in which interim directions were given has no concern to lay a separate motion for contempt in case such an interlocutory order has been breached even after disposal of the main proceeding. These contentions are, perhaps, based on the observations made by their Lordships in para 9 which reads as under:

> "9. In a given case, even if ultimately the interim order is vacated or relief in the main proceeding is not granted to a party, the other side cannot take that as a ground for dis-obedience of any interim order passed by the Court."

. The reliance so placed is fallacious. Interlocutory order passed in a lis cannot have an independent life and such an order would survive till the lis is pending or till it is vacated. After the main proceedings have been disposed off, there cannot be cause of action for contempt on the basis of the events that have taken place after the main lis is disposed off. Their Lordships also very clearly

stated that in a given case even if the interim order is vacated or relief in the main proceedings is not granted to a party, the other side cannot take that as a ground for dis-obedience of any interim order passed by the Court.

8. Notwithstanding the above observations, let us examine whether in the case at hand the Notice of Motion taken out under Order XXXIX Rule 2-A of CPC was required to be allowed, as has been contended by the appellants. Rule 2-A(1) has been reproduced hereinabove. The Notice of Motion No.3430 of 1993 was made absolute in terms of prayer clause (a)(iv). Prayer clauses (a)(ii) and (a)(iii) were not considered in view of the undertaking furnished and prayer clause (a)(i) was not pressed. Prayer clause (a)(iv) of the said Notice of Motion restrained the first defendant from trying to alter the composition of the present Board of Trustees in any manner of the first defendant and the first defendant is a registered society. As noted earlier the whole case is based on the ground that the undertaking given on behalf of the defendant nos.2 to 4 was breached. Such a cause of action, even though assumed to have occurred, would not fall within the ambit of Rule

2-A(1) of Order XXXIX. There has to be disobedience of any injunction granted or other order made under Rule (1) or Rule (2) of Order XXXIX or breach of any of the terms on which such injunction was granted or the order made. This view would be fortified by referring to the definition of "Civil contempt" within the meaning of Section 2(b) of the Contempt of Courts Act, 1971. The said definition reads as under:

> "Civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court".

The words "wilful breach of an undertaking given to a Court" do not find place under Rule 2-A(1) of Order XXXIX of CPC.

9. There is no dispute that the contempt proceedings are of quasi criminal in nature and, therefore, the statutory provisions in that regard must be read strictly. If the undertaking furnished before the trial Court does not fall within the ambit of Order XXXIX Rule 2-A(1), the Notice of Motion taken out must fail. The scope of contempt of Court as contemplated under Order XXXIX Rule 2-A(1) is

different and perhaps narrower than the scope of civil contempt within the meaning of section 2(b) of the Contempt of Courts Act, 1971.

10. Thus on all counts there is no case made out to allow the Notice of Motion No.4455 of 1995 and though the impugned order proceeds on the basis that no specific charge was framed in the motion, the final order rejecting the notice of motion does not call for interference. The trial Court has held that the contempt notice of motion was not maintainable for the reasons that specific charge was not stated in the same. It is not necessary to examine the correctness of the said observation and I have, therefore, independently examined whether the said notice of motion was required to be allowed.

11. In the result, this revision application fails and the same is hereby dismissed. Rule discharged.

(B.H.MARLAPALLE,J.)